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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MICHAEL FOX,

12 Plaintiff,

13 vs.

14 PAULA PATSON, et al.,

15 Defendants.

CASE NO. 07cv2388 DMS (POR)

**ORDER GRANTING THE
FEDERAL DEFENDANTS'
MOTION TO DISMISS**

[Docket No. 21]

16 This case comes before the Court on a motion to dismiss filed by the Federal Defendants.
17 Plaintiff has filed an opposition to the motion, and the Federal Defendants have filed a reply. For the
18 reasons set out below, the Court grants the motion.

19 **I.**

20 **BACKGROUND**

21 Plaintiff Michael Fox is proceeding *pro se* in this case. On December 20, 2007, he filed a
22 Complaint naming the Federal Bureau of Investigations, the United States Attorneys Office and the
23 United States Department of Justice as defendants. In that Complaint, Plaintiff sought an order from
24 this Court directing those entities to investigate the alleged violations of Plaintiff's civil rights.

25 On January 30, 2008, Plaintiff filed a First Amended Complaint. That Complaint names a
26 number of additional individuals and entities as defendants, and includes a long narrative of recent
27 events in Plaintiff's life. One of these events was a car accident that occurred in Galveston, Texas.
28 Plaintiff was sleeping in his minivan, which was parked on the side of a road, when his vehicle was

1 hit from behind by another vehicle. Certain individuals involved in that accident are named as
2 defendants in the First Amended Complaint.

3 In general, the First Amended Complaint includes allegations of a vast government conspiracy
4 to violate Plaintiff's constitutional rights, including bodily attacks on Plaintiff by government officials,
5 constant government surveillance of Plaintiff, government interference with Plaintiff's vehicle,
6 government interference with Plaintiff's postal and electronic mail delivery, and the subject car
7 accident, which Plaintiff alleges was staged by the government.

8 II.

9 DISCUSSION

10 The Federal Defendants move to dismiss the First Amended Complaint on three grounds.
11 First, they argue Plaintiff has failed to satisfy the pleading requirements of Federal Rule of Civil
12 Procedure 8(a). Second, the Federal Defendants assert the Court lacks subject matter jurisdiction over
13 Plaintiff's claims. Finally, the Federal Defendants contend Plaintiff's claims against them are
14 unexhausted. Because the jurisdictional argument is dispositive, the Court begins and ends its analysis
15 with that issue.

16 Based on this Court's review of the First Amended Complaint, it appears Plaintiff is attempting
17 to allege a violation of his federal constitutional rights, over which this Court would have subject
18 matter jurisdiction pursuant to 28 U.S.C. § 1331. However, a district court lacks subject matter
19 jurisdiction where the claim before it is "wholly insubstantial and frivolous." *Bell v. Hood*, 327 U.S.
20 678, 682-83 (1946). A claim is frivolous "where it lacks an arguable basis either in law or in fact."
21 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). If a claim is classified as frivolous, "there is, by
22 definition, no merit to the underlying action and so no reason to grant leave to amend." *Lopez v.*
23 *Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (*en banc*).

24 Here, the Federal Defendants argue Plaintiff's case meets this standard, and given the
25 allegations set out above, the Court agrees. Plaintiff's allegations about a vast government conspiracy
26 are "totally divorced from the real world, or in the language of the Supreme Court, 'so attenuated and
27 unsubstantial as to be absolutely devoid of merit.'" *O'Connor v. United States*, 159 F.R.D. 22, 26 (D.
28 Md. 1994) (quoting *Nietzke*, 490 U.S. at 327 n.6). Because Plaintiff cannot possibly amend his

1 complaint to correct these deficiencies, the motion to dismiss is granted without leave to amend.

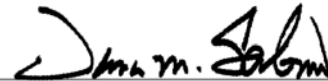
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3 **III.**

4 **CONCLUSION AND ORDER**

5 In light of the above, the Court grants the Federal Defendants' motion to dismiss. All other
6 pending motions are hereby denied as moot. The Clerk of Court shall close this case.

7 **IT IS SO ORDERED.**

8 DATED: June 24, 2008

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10 HON. DANA M. SABRAW
11 United States District Judge
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